88-1064

Supreme Court, U.S.
FILED
NOV 22 1988
JOSEPH F. SPANIOL, JR.
CLERK

CASE NUMBER_____

United States Supreme Court

Term October, 1988

ADDENDUM

Clayton Kendall Miller III — Ninth Circuit Court of Appeals #86-2452 FDC TUC RMB #83418

Plaintiff-Appellant

vs.

ConAgra and Peavey Corporation

Defendant - Appellees

Nature of Proceeding

Originally to determine the value of a stockholders shares in a public corporation that was sold at less than book value.

TITLE

Petition to the U.S. Supreme Court to review Ninth Circuit Court of Appeals final decision.

CASE NUMBER_____

United States Supreme Court

Term October, 1988

ADDENDUM

NINTH CIRCUIT COURT OF APPEALS:	PAGE #
Order dated August 25, 1988	(1)
Appellants suggestion for a rehearing	(4)
Memorandum dated April 29, 1988	(11)
Order dated September 22, 1988	(31)
FEDERAL DISTRICT COURT, TUCSON	
#84 Order dated July 23, 1986	(34)[1]
#41 Judgment dated February 28, 1984	(36)
CONAGRA - S.E.C. FILINGS	
8K Filed 7/20/82, Page	(43)
10Q Filed 11/28/82, Page	(45)
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Peavey Letter, November 18, 1986	(46)

ADDENDUM

NINTH CIRCUIT COURT OF APPEALS:	PAGE #
Miller Letter, November, 1986	(48)
MINNESOTA LAW 301-40	(52)

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Clayton K. Miller, III	)	
	)	
Plaintiff-Appellant,	)	No. 86-2452
	)	
v.	)	D.C. No. 83-418-T-RMB
	)	
PEAVEY COMPANY; CONAGRA, INC. corporations doing business in the state of Arizona,	)	ORDER
	)	
Defendants-Appellees.	)	

Before: FERGUSON, LEAVY, circuit Judges, and REDDEN,***

The panel has voted to deny the petition for rehearing. Judges Ferguson and Leavy have voted to reject the suggestion for rehearing en banc, and Judge Redden has so recommended.

*** Honorable James A. Redden, United States District Judge for the District of Oregon, sitting by designation.

The full court has been advised of the en banc suggestion and no judge of the court has requested a vote on it.

The petition for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLAYTON KENDALL MILLER III)	No. 86-2452
PLAINTIFF-APPELLANT)	DC# CIV-83-481RMB
)	Appellant's suggestion for a rehearing EN BAC
vs.)	
PEAVEY COMPANY, et al.,)	
Defendants-Appellees)	

PETITION TO THE 9TH CIRCUIT COURT OF APPEAL

TO THE CLERK OF THE COURT

Introduction

In appellant's judgement one or more of the situations in the purpose section exist. Concerning the court's 4/29/88 judgment a copy is enclosed, a rehearing is requested.

The court should rehear this case because the Minnesota law discussed on page 6 of the Courts Judgment is a CATCH 22 SITUATION, and

seems to deprive me of federal judicial review one way or another. Suppose appellant sought judicial review under 28 U.S.C. section 2202 - - -Peavey's lawyer would argue for 2 years that the Minnesota law on page 6 says - - - in part "is the final judge of both law and fact" and his award will not be reviewed or set aside for mistake of either law & fact" - - -" an award will not be set aside merely because the court thinks the arbitrators erred either as to the law or the facts". In this case the appraisers possibly erred by several $100M. Accounting data and common sense suggests this.

This law allows the appraisers to blatenly ignore that which clearly exists, in terms of value, in an appraisal proceeding and allows them to ignore federal case law which suggests that the appraiser cannot ignore these factors.

The Minnesota law on page 6 allows the appraisers to do as they please and ignore federal case law. Because the law suggests "no review" what can a weak party to a binding arbitration procedure such as this do about it? Minnesota law does this indirectly by not allowing a check and balance. This is important in this situation because it allows the appraiser to co er up and ignore whatever they want to. The law is too far reaching!

Request that the COURT review the facts mentioned in the appellant's filing's in the 9th Circuit Court. Letter dated 11/24/86, pleadings dated 9/26/87, 1/12/88. Appellant especially request a review of his affidavit filed 1/12/88 which suggests misconduct by the appraisers.

Also, items from the Tucson Federal Court Docket sheet #'s 28-24-75-76 and 83. These

are material points of fact that may have been overlooked in the decision. The item's above clearly suggest that the appraisals award is pattenly unfair and therefore should be set aside.

Peavey Corporation never disputed anything Appellant said in his filings with the 9th Circuit Court. Their attitude is "so what". Binding arbitration is binding!

The Minnesota law is too far reaching and as such allows the appraiser to ignore whatever clearly exist's and is contrary to their desired end result. Minnesota laws allows for error and omissions. But to blatantly ignore common sense is too much - - - - (Peavey was sold at less than book value and fiscal `81' was a record year in sales - profits).

Not to mention ignoring federal case laws which deprives me of the protection of same. If the appraiser ignored same it could be said that this law indirectly takes away my rights under federal law.

To preserve the sanctity that surrounds binding arbitrations appellant suggests that a rehearing EN BAC is in order. This matter is of national importance - - - note the huge number of stockholder suits in the court system.

Dated this 9th day of May, 1988

A copy of the
foregoing mailed
this day May 9, 1988
to Frank Placenti,
Phoenix, Arizona
Attorney for the
Appellee

CLAYTON KENDALL MILLER III
PRO PER
4565 N. Palaside
Tucson, Arizona 85715
(602 749-5269

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLAYTON K. MILLER, III	)	
	)	
Plaintiff-Appellant,	)	No. 86-2452
	)	
v.	)	D.C. No. 83-418-T-RMB
	)	
PEAVEY COMPANY; CONAGRA, INC. corporations doing business in the state of Arizona,	)	MEMORANDUM*
	)	
Defendants-Appellees.	)	

Appeal from the United States District Court
for the District of Arizona
Richard M. Bilby, District Judge, Presiding

Submitted** April 12, 1988
San Francisco, California

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel finds this case appropriate for submission without oral argument pursuant to 9th Cir. R. 34-4 and Fed. R. App. P. 34(a)

Before: FERGUSON, LEAVY, Circuit Judges, and REDDEN,[***]

FACTS AND PROCEEDINGS

In June of 1982, Clayton Kendall Miller III (Miller), an Arizona citizen, owned 1,100 shares of stock in Peavey Company (Peavey). Peavey is a Minnesota corporation with its principal place of business in Minneapolis, Minnesota. In May 1982, the Board of Directors of Peavey gave notice to its shareholders of a special meeting to be held on June 24, 1982. The purpose of the meeting was to consider a merger with a wholly owned subsidiary of ConAgra, Inc. (ConAgra).

At the June 24, 1982 meeting, Peavey's shareholders were offered a cash price of $30.00 per share or ConAgra stock worth $30.00 per share in exchange for consenting

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[***] Honorable James A. Redden, United States District Judge for the District of Oregon, sitting by designation.

to the merger and tendering their Peavey stock. At that time, Peavey's stock was worth $26.00 per share on the New York Stock Exchange. Before the public announcement of the proposed merger, the stock was selling for approximately $17.00 per share.

Of the 2,552 Peavey shareholders, only Miller dissented from the merger. The merger took place on July 20, 1982.

If a shareholder dissents to a merger, 1951 Minn. Laws section 301.44(1) (repealed 1984)[1] provided that a written objection could be filed and a demand made for payment for all shares. Section 301.44(1)[2] also

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[1] Section 301.44(1) has been superceded by the Minnesota Business Corporation Act of 1984, which does not apply retroactively.

[2] Section 301.44(1) stated in relevant part:

> If a domestic corporation has given notice to shareholders of a proposal to merge into or consolidate with any other corporation or corporations, a shareholder may, at any time prior to the date of the meeting at which such proposed merger or consolidation is

provided that if a corporation and a shareholder could not agree on a fair cash value for the shares, the value is to be determined in accordance with 1951 Minn, Laws section 301.40. Section 301.40(2) (amended 1965) (repealed 1984) provided for the appointment of three disinterested appraisers to determine the fair cash value at the time of the merger.[3]

> to be voted upon, file a written objection to such merger or consolidation in the office of the secretary or president of the corporation and demand payment for his shares and have the fair cash value thereof determined as provided in section 301.40.

[3] Section 301.40(2) stated in relevant part:

> If, after such a demand [for payment for shares] by one or more shareholders, the corporation and one or more shareholders cannot agree upon the fair cash value of the shares at the time [of the merger] such value shall be determined in a single proceeding by three disinterested appraisers, one of whom shall be named by the shareholders, another by the corporation, and the third by the two thus chosen.

After it received Miller's objections, Peavey tried to negotiate a fair price for Miler's shares, but Miller refused to negotiate or to set a price. H claimed it wa impossible to set a price because he did not know the true value of Peavey's assets. Then the parties disagreed about how to conduct the arbitration proceeding. Subsequently, Miller filed a complaints in the District of Arizona asking for a declaratory judgment pursuant to 28 U.S.C S 2201 and Federal Rule of Civil Procedure 57 on what procedures were proper. The district court had diversity jurisdiction pursuant to 28 U.S.C. S 1332.

In his amended complaint, Miller requested the court to decide whether section 301.40(2): (1) allowed discovery prior to the arbitration proceeding, (2) required the corporation to pay for appraiser's expenses and other expenses, and (3) allowed the right to subpoena documents, to compel witnesses'

attendance, to have witnesses testify under oath, and to cross examine witnesses, as well as other procedural rights. Both parties moved for summary judgment on the ground that there were no genuine issues of material fact as to the procedures required by section 301.40(2) to determine the fair cash value of a dissenter's shares in an arbitration proceeding.

On February 27, 1984, the district court entered its judgment declaring the procedures to be used and the rights of the parties pursuant to section 301.40(2). Miller did to appeal that judgment.

The arbitration panel delivered its confidential final report, Valuation as of 7/20/82 of Peavey Company by Court Appointed Arbitration Panel (March 31, 1986) (The Arbitrator's Report), to the district court on April 22, 1986. At a status conference before the district court on June 23, 1986,

Miller objected to the panel's valuation of his stock. The pa el had concluded unanimously that the fair cash value of Miller's shares at the time of the merger was $30.00 per share, the price Miller had been offered. Miller claimed the appraisal was not fair because it did not determine Peavey's net asset value. He asked the district court to remand the report to the panel and order it to use a different appraisal method.

On July 17, 1986, the district court concluded that the arbitration panel had complied with section 301.40(2) and its judgment of February 27, 1984, and ordered the matter dismissed. It did not examine the merits of the panel's determination of fair cash value. Miller appeals pro se from that order. We affirm.

DISCUSSION

After a court issues a declaratory judgment under 28 U.S.C. section 2201, 28 U.S.C. section 2202 provides that a district court may grant "{f}urther necessary or proper relief based on a declaratory judgment . . . after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

The district court properly dismissed Miller's challenge of the panel's determination. It did not have jurisdiction to examine the merits of that determination. Section 301.40(2) provides that "{t}he determination of a majority of the appraisers in good faith made shall be binding on all demanding shareholders and the corporation{.}" (Emphasis added). Miller presents no evidence that the appraisers acted in bad faith when they determined the value of his stock.

The district court found that the appraisal proceeding which section 301.40(2) contemplated is a non-judicial compulsory arbitration proceeding, to be conducted in accordance with the procedures set forth in the Minnesota Uniform Arbitration Act, Minn. Stat. An. SS 572.08-30 (West 1988), which was adopted in 1957.[4] Minnesota cases which interpret the Uniform Arbitration Act hold that when an issue is raised regarding the merits of an arbitrator's decision:

> (A)n arbitrator, in the absence of any agreement limiting his authority, is the final judge of both law and fact, . . . and his award will not be reviewed or set aside for mistake of either law or fact in the absence of

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[4] The court was provided with an expert witness's analysis of the legislative history of section 301.40(2) and Minnesota case law to determine if that section contemplates an arbitration proceeding subject to the Uniform Arbitration Act. The expert witness, Professor Richard Ihrig of the William Mitchell College of Law in St. Paul, Minnesota, concluded that section 301.40(2)'s valuation proceeding is arbitration subject to the Uniform Arbitration Act.

> fraud, mistake in applying his own theory, misconduct, or other disregard of duty. An award will not be set aside merely because the court thinks the arbitrators erred either as to the law or the facts.

Koranda v. Austin Mut. Ins. Co., 397 N.W.2d 357, 361 (Minn. App. 1986) (quoting Cournoyer v. American Television and Radio Co., 249 Minn. 577, 580; 83 N.W.2d 409, 411 (1957); see also Eric A. Carlstrom v. Independent School Dist., 156 N.W.2d 479, 483 (Minn. 1977).

Clearly section 301.40(2) and Minnesota case law provided no jurisdiction to the district court to examine the merits of the arbitration panel's determination of the fair cash value of Miller's stock. The order of dismissal is AFFIRMED.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLAYTON K. MILLER, III	)	
	)	
Plaintiff-Appellant,	)	No. 86-2452
	)	
v.	)	D.C. No. 83-418-T-RMB
	)	
PEAVEY COMPANY; CONAGRA, INC. corporations doing business in the state of Arizona,	)	MEMORANDUM[1]
	)	
Defendants-Appellees.	)	

Appeal from the United States District Court
for the District of Arizona
Richard M. Bilby, District Judge, Presiding

Submitted[2] April 12, 1988
San Francisco, California

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[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

[2] The panel finds this case appropriate for submission without oral argument pursuant to 9th Cir. R. 34-4 and Fed. R. App. P. 34(a)

Before: FERGUSON, LEAVY, Circuit Judges, and REDDEN,[3]

FACTS AND PROCEEDINGS

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[3] Honorable James A. Redden, United States District Judge for the District of Oregon, sitting by designation.

to the merger and tendering their Peavey stock. At that time, Peavey's stock was worth $26.00 per share on the New York Stock Exchange. Before the public announcement of the proposed merger, the stock was selling for approximately $17.00 per share.

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In his amended complaint, Miller requested the court to decide whether section 301.40(2): (1) allowed discovery prior to the arbitration proceeding, (2) required the corporation to pay for appraiser's expenses and other expenses, and (3) allowed the right

to subpoena documents, to compel witnesses' attendance, to have witnesses testify under oath, and to cross examine witnesses, as well as other procedural rights. Both parties moved for summary judgment on the ground that there were no genuine issues of material fact as to the procedures required by section 301.40(2) to determine the fair cash value of a dissenter's shares in an arbitration proceeding.

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On July 17, 1986, the district court concluded that the arbitration panel had complied with section 301.40(2) and its judgment of February 27, 1984, and ordered the matter dismissed. It did not examine the merits of the panel's determination of fair cash value. Miller appeals pro se from that order. We affirm.

DISCUSSION

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The district court properly dismissed Miller's challenge of the panel's determination. It did not have jurisdiction to examine the merits of that determination. Section 301.40(2) provides that "(t)he determination of a majority of the appraisers in good faith made shall be binding on all demanding shareholders and the corporation(.)" (Emphasis added). Miller presents no evidence that the appraisers acted in bad faith when they determined the value of his stock.

The district court found that the appraisal proceeding which section 301.40(2) contemplated is a non-judicial compulsory arbitration proceeding, to be conducted in accordance with the procedures set forth in the Minnesota Uniform Arbitration Act, Minn. Stat. An. SS 572.08-30 (West 1988), which was adopted in 1957.[4] Minnesota cases which interpret the Uniform Arbitration Act hold that when an issue is raised regarding the merits of an arbitrator's decision:

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[4] The court was provided with an expert witness's analysis of the legislative history of section 301.40(2) and Minnesota case law to determine if that section contemplates an arbitration proceeding subject to the Uniform Arbitration Act. The expert witness, Professor Richard Ihrig of the William Mitchell College of Law in St. Paul, Minnesota, concluded that section 301.40(2)'s valuation proceeding is arbitration subject to the Uniform Arbitration Act.

> fraud, mistake in applying his own theory, misconduct, or other disregard of duty. An award will not be set aside merely because the court thinks the arbitrators erred either as to the law or the facts.

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Clearly section 301.40(2) and Minnesota case law provided no jurisdiction to the district court to examine the merits of the arbitration panel's determination of the fair cash value of Miller's stock. The order of dismissal is AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLAYTON K. MILLER, III	)	
	)	
Plaintiff-Appellant,	)	No. 86-2452
	)	
v.	)	D.C. No. 83-418-T-RMB
	)	
PEAVEY COMPANY; CONAGRA, INC. corporations doing business in the state of Arizona,	)	ORDER
	)	
Defendants-Appellees.	)	

Before: FERGUSON, LEAVY, Circuit Judges, and REDDEN,* District Judge

The appellees Peavey Company and ConAgra, Inc. petition for an award of attorneys fees and costs on appeal, pursuant to Federal Rules of Appellate Procedure 38 and 39(a) and (c), and Rule 39-1.6 of this circuit. They seek $227.50 in costs and attorneys' fees of $18,211.50 against pro se litigant Clayton K. Miller III. The petition is unopposed.

*Honorable James A. Redden, United States District Judge for the District of Oregon, sitting by designation.

The appellees claim Miller's appeal was frivolous, thereby entitling them to fees and costs under Federal Rule of Appellate Procedure 38. An appeal is frivolous "when the result is obvious, or the arguments are wholly without merit.'" NLRB. v. Catalina Yachts, 679 F2d 180, 182 (9th Cir. 1982) (quoting Libby, McNeill and Libby v. City Nat'l Bank, 592 F.2d 504, 505 (9th Cir. 1978). The appellees claim Miller's appear is frivolous because he raised issues that were neither before the district court nor decided by the district court.

We decline to hold this appeal frivolous. The district court held it lacked jurisdiction to remand a report on the valuation of stock to an arbitration panel. We read Miller's appeal, despite its lack of legal skill, to challenge the district court's determination of its jurisdiction. We ruled on that issue, affirming the

district court. Because the district court's final judgment that it lacks jurisdiction is appealable, Miller's appeal was not wholly without merit.

The motion for costs and attorneys' fees on appeal is DENIED.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

CLAYTON K. MILLER, III, an unmarried man, Plaintiff vs. THE PEAVEY COMPANY and CONAGRA, INC., corporations doing business in the state of Arizona, Defendants	)	No. CIV 83-418 TUC-RMB O R D E R

The Court finds that the arbitrators complied with the Court Order of February 27, 1984, and the procedures set forth under M.C.B.A. SS 301.40 and 310.44, in determining the value of plaintiff's stock.

From the determined value, the defendant is authorized to deduct $150.000 previously allowed as a sanction against the plaintiff. The remaining sum is to be paid to the plaintiff forthwith.

This matter is DISMISSED, each party to bear its own costs.

DATED this 17th day of July, 1986.

Richard M. Bilby
United States District Judge

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

CLAYTON K. MILLER, III Plaintiff vs. THE PEAVEY COMPANY and CONAGRA, INC., corporations doing business in the state of Arizona, Defendants	)	No. CIV 83-418 TUC-RMB JUDGMENT

This matter came on for hearing before this Court on February 16, 1984, upon motion for summary judgment by defendant Peavey Company ("Peavey") and the cross-motion of plaintiff Clayton K. Miller, III ("Miller") seeking a summary declaration of the rights and obligations of the parties under Minnesota Business Corporation Act SS 301.40 and 301.44.

The Court having heard and reviewed the written and oral arguments of counsel, and

the pleadings, affidavits and documents, and there being no issues of fact for determination, declares and determines the rights and obligations of the parties as follows:

1. Miller is a dissenting shareholder of Peavey within the meaning of M.B.D.A. SS 301.40 and 301.44 with respect to the merger of Peavey and a wholly-owned subsidiary of ConAgra that took place on or about July 20, 1982.

2. Pursuant to M.B.C.A. SS 301.40 and 301.44, Miller is entitled to a statutory appraisal proceeding to determine the fair cash value of the 1,100 shares of Peavey stock which he owns.

3. The appraisal proceeding contemplated by M.B.C.A. SS 301.40 and 301.44 is a non-judicial compulsory arbitration proceeding and is to be conducted in accordance with the

procedures set forth in the Minnesota Uniform Arbitration Act, Minn. Stat. Ch. 572.

4. Miller and Peavey is each required to nominate a disinterested appraiser to serve on the arbitration panel ("Panel"(which shall appraise Miller's shares in Peavey. That nomination shall occur within twenty (2) days of the entry of this Judgment.

5. The two appraisers so nominated shall then within twenty (20) additional days select a third appraiser to serve with them on the Panel.

6. Pursuant to M.B.C.A. ss 301.40 and 301.44, all three appraisers shall be disinterested persons who have no financial interest in or relationship to the parties nor have advised or consulted with the parties on any issues involved in this case.

7. Pursuant to the Minnesota Uniform Arbitration Act, neither Miller or Peavey shall have the right to conduct discovery

prior to or in connection with the appraisal proceeding. Miller's right to discovery is limited to those shareholders' inspection rights provided by M.S.A. S 301.34; "books of accounts" refers to all financial records of the corporation. The Panel of appraisers shall have the right to issue subpoenas for the production of whatever information it deems necessary to determine the fair cash value of Miller's shares.

8. Pursuant to M.S.A. S 572.94(b), the parties may take no depositions except for use at the appraisal hearing and then only with the written approval of the appraisers.

9. The Panel shall conduct a single proceeding to determine the fair case value of Miller's share sin Peavey. Within thirty (3) days of the termination of that proceeding, the Panel shall issue and serve upon Miller and Peavey, by certified mail, a written decision setting forth their

determination of the fair cash value of Miller's 1,100 shares in Peavey. In the event all three members of the Panel cannot agree on the value to be assigned to those shares, the decision of the majority of the Panel members shall control.

10. In determining the fair cash value of Miller's shares, the Panel shall consider all factors which it determines to be relevant.

11. Within ten (10) days of the service of the decision of the arbitration Panel, Miller shall tender to Peavey all of his shares. Within thirty (30) days thereafter Peavey shall pay to Miller the fair cash value of the tendered shares as determined by the arbitration Panel. These time periods shall be suspended in the event of an appeal from or other judicial challenge to the arbitration award and shall run from the final termination of any such proceeding.

12. Expenses and fees for the arbitration shall be paid pursuant to M.S.A. S 301.49(3). No expert witness' fees shall be awarded. Witness' fees shall be awarded on a mileage and per diem basis as determined by the Panel. The recovery of any costs against plaintiff after the Panel's ruling must be based upon its determination that the plaintiff's refusal to accept the original offer was arbitrary or vexatious or was otherwise not in good faith.

13. All taxable costs shall be paid by the party(s) against whom assessed directly to the members of the Panel and/or the opposing party within twenty (20) days of the date of service of the Panel's final written assessment of taxable costs.

14. This Court shall retain jurisdiction over this action for the purpose of issuing any further Orders as may be appropriate and

necessary until the delivery of the Panel's decision to the parties.

DATED: February 27th, 1984

Richard M. Bilby
United States District Judge

Part I. Financial Information

Peavey Company and Subsidiaries
CONSOLIDATED CONDENSES BALANCE SHEETS
(in thousands)

	April 30, 1982 (unaudited)	July 31, 1981
Current assets:		
Cash and short-term cash investments	$ 19,289	11,046
Segregated funds, net of customers' margin deposits of $41,419 and $36,481, respectively	2,205	1,059
Receivables, less allowance for doubtful accounts of $2,788 and $1,748, respectively	78,747	76,146
Inventories:		
Grain, flour and millfeed	102,476	62,798
Merchandise	88,070	87,204
Other	4,509	6,097
Other current assets	6,586	4,626
Total current assets	301,882	248,976
Property, plant, and equipment	218,399	208,800
Less accumulated depreciation and authorization	83,850	77,072
Property, plant and equipment, net	134,549	131,728
Other assets	7,446	4,572
Total Assets	$443,877	385,276
Current liabilities:		
Notes payable	$ 71,287	15,129

Current portion of long-term debt	3,157	3,213
Accounts Payable	80,436	78,547
Accrued expenses	19,930	21,851
Accrued taxes on income	2,691	4,913
Total current liabilities	177,601	123,653
Long-term debt	68,417	70,887
Deferred income taxes, net	15,737	14,367
Total liabilities	261,755	208,907
Minority interests in subsidiary	296	299
Stockholders' equity:		
Preferred stock, par value $100	3,366	3,366
Common stock, par value $2.50	14,942	14,338
Additional paid-in capital	2,299	2,393
Retained earnings	163,867	157,879
Deduct treasury stock, at cost	(1,994)	(1,096)
Equity adjustment for foreign currency translation	(654)	-
Total stockholders' equity	181,826	176,070
Total liabilities and stockholders equity	$443,877	385,276

*Restated for FAS 43 - See note 5.

See accompanying notes to consolidated condensed financial statements.

(3) In July 1982, Peavey Company, in a transaction accounted for as a purchase, was merged into ConAgra, Inc. Operations of Peavey Company have been included since the date of acquisition. The purchase price has tentatively been allocated to the assets and liabilities acquired on an estimated basis. Final allocations will be based on appraisals and are not expected to have a significant effect on the accompanying financial statements. The allocation of purchase price as reflected in the accompanying financial statements is as follows (in thousands)

Current Assets	$266,000
Current liabilities	169,000
Working capital	97,000
Property, plant and equipment	114,000
Other non current assets	3,000
Long-term liabilities assumed	(61,000)
Purchase price	$158,000

The following summary, on a pro forma basis, combines the consolidated results of operations of the company (1) for the twenty-six weeks ended November 28, 1982 with those of Peavey Company for this two months ended July 31, 1981; and (2) for the thirteen and twenty-six weeks ended November 29, 1981 with those of Peavey Company for its three and six months ended November 30, 1981, respectively.

	Thirteen Weeks Ended November 29, 1981	Twenty-Six Weeks Ended November 18, 1982	November 29, 1981
	(In thousands, except per share amounts)		
Net sales	$648,956	$1,374,424	$1,355,875
Net income	14,270	19,988	24,540
Income per common and common equivalent share:			
Primary	$ .77	$ 1.02	$ 1.32
Fully diluted	$ .76	$ 1.02	$ 1.31

In September of 1982, ConAgra completed the organization of a poultry company which will combine the United States poultry operations of ConAgra and Imperial Foods Limited. ConAgra and Imperial Foods each invested $18,000,000 and each received a 50% equity interest in the new company, Country Poultry, Inc. which will be managed by ConAgra.

November 18, 1986

Mr. Clayton Miller
4665 North Palisades
Tucson, Arizona 85715

Re: Clayton Miller v. Peavey Company

Dear Mr. Miller:

I have replaced Mr. Sangalis as the general counsel for Peavey Company. I thank you for your letter of November 16, 1986. Having reviewed my large file in this case, I too would like to bring the matter to a conclusion.

I look forward to your call on Friday, November 20, at 2:00 p.m. central standard time. I must caution you that I will be away from Minneapolis on Thursday, November 19 and

I will return Friday morning. If for any reason I have not returned to the office by 2:00 p.m., please leave a message with my secretary and I will promptly return your call later that afternoon. Thank you for your cooperation.

Very truly yours,

Jerold A. Gilbert
General Counsel

JAG/dlm/11186-5

November 16, 1986

C. Miller

602-749-5269

Peavey Corp.

Minn. Minn.

Mr. Sangalis:

Enclosed is a copy of Peavey's paper work filed Oct. 21st, 1986, with the 9th Circuit Court. Item #2 suggests we might settle.

May I call you Friday NOvember 20th at 2 PM Minn. time, to see if we can put this matter to rest.

I am in the final stages of re-mortgaging my house for a retainer. By the time some high priced lawyer with a huge ego gets done

FLEECING us both over the next 2 years - -
perhaps I can compromise my position.

I do not want to be played with again - so if we can talk Friday please advise.
Thank you,

C.K. Miller III

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLAYTON K. MILLER, III	)	
	)	
Plaintiff/Appellant,	)	Docket No. 86-2452
	)	(No. CIV 83-418
	)	RMB)
	)	
vs.	)	RESPONSE TO MOTION
	)	FOR EXTENSION OF
	)	TIME, AND TO
	)	RECONSIDER ORDER
	)	DENYING
	)	PREBRIEFING
	)	CONFERENCE
	)	
PEAVEY COMPANY,	)	
	)	
Defendant/Appellee.	)	
	)	

Defendant/Appellee Peavey Company ("Peavey"), by and through its undersigned counsel, responds to the plaintiff/appellant's Motion for Extension of Time, and To Reconsider Order Denying Prebriefing Conference ("Motion") as follows:

1. The Motion is unclear as to which deadline(s) the appellant seeks to extend for 60 days. Moreover, in its Order of September

16, 1986, this Court has already denied a similar request for an extension based upon the appellant's earlier representation that 45 days would be enough time to locate an attorney.

2. Peavey would not object to a prebriefing conference, assuming that the conference was held as a vehicle for the exploration of settlement and the disposition of this appear prior to the submission of briefs in light of the following facts:

(a) The District Court's Judgment which determined the parties' rights was entered on

301.40 Rights of shareholders not assenting to retain corporate action

Subdivision 1. Objection to proposed amendment of articles. If a corporation has given notice to shareholders of a proposal to amend the articles of incorporation, which proposed amendment would substantially change the corporate purposes or would extend the duration of the corporation, a shareholder may, at any time prior to the date of the meeting at which such proposed amendment is to be voted upon, file a written objection to such amendment in the office of the secretary or president of the corporation and demand payment for all shares owned by such shareholder; provided, that such demand shall be of no force and effect if such shareholder votes in favor of the amendment, or at any time consents thereto in writing, or if the proposed amendment be not in fact effected.

Subd. 2. Appraisers. If, after such a demand by one or more shareholders, the corporation and one or more shareholders cannot agree upon the fair cash value of the shares at the time such amendment was authorized, such value shall be determined in a single proceeding by three disinterested appraisers, one of whom shall be named by the shareholders, another by the corporation, and the third by the two thus chosen. The appraiser named by such shareholders shall, in the event of disagreement among such shareholders, be selected by the holders of a majority of the shares with respect to which payment has been demanded. The determination of a majority of the appraisers in good faith made shall be binding on al demanding shareholders and the corporation, and if the amount so determined is not paid by the corporation within 30 days after it is made, such amount may be recovered in an action by any such demanding shareholder

against the corporation. The corporation shall not be required to it of the shares for which such payment was demanded and upon surrender of the certificate or certificates evidencing the same.

Subd. 3. Expenses. The appraisers' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration shall be paid by the corporation except that all or any part of such costs and expenses may be apportioned and assessed against any or all of the demanding shareholders if a majority of the appraisers in good faith find that such demanding shareholders refused to accept an offer to purchase of the corporation and that such refusal was arbitrary or ambitious or otherwise not in good faith.

Subd. 4. Withdrawal of demand. Any shareholder making such demand may withdraw the demand at any time prior to the determination of the fair cash value of the shares by filing written notice of such withdrawal in the office of the secretary or president of the corporation.

Subd. 5. Payment, when not made. A shareholder shall not be entitled to payment for his shares under the provisions of this section unless the value of the corporate assets which would remain after such payment would be at least equal to the aggregate amount of its debts and liabilities exclusive of stated capital. Amended by Laws 1965, c. 504 S 9, eff. May 20, 1965.

APPENDIX "A"

S 301.44 Dissenting shareholders; rights

Subdivision 1. Demand for payment. If a domestic corporation has given notice to shareholders of a proposal to merge into or consolidate with any other corporation or corporations, a shareholder may, at any time prior to the date of the meeting at which such proposed merger or consolidation is to be voted upon, file a written objection to such merger or consolidation in the office of the secretary or president of the corporation and demand payment for his shares and have the fair cash value thereof determined as provided in section 301.10, the relevant provisions of which section shall be in all respects applicable; provided, that such demand shall be of no force and effect if such shareholder votes in favor of the merger or consolidation, or at any time consents thereto in writing, or if the proposed merger or consolidation be not in fact effected. The liability of such

corporation to such dissenting shareholder for the fair cash value of the shares so agreed upon or awarded shall also be a liability of the consolidated or surviving corporation, as the case may be.

Subd. 2. Failure to object deemed assent. Those shareholders of the constituent corporations who do not object in writing and demand payment for their shares pursuant to the provisions of subdivision 1 shall be deemed to have assented to the consolidation or merger, as the case may be, on the terms specified in the agreement of the consolidation or merger.

Amended by Laws 1951, c 98, S 10, eff. March 21, 1951.

APPENDIX "A"

Notes of Decisions

In general 1

Evidence supporting findings 3

Review 4

Vacation 2

1. In general

Arbitration award which awards a sum of money in satisfaction of various claims of the parties need not separately treat each claim or explain the arbitrator's reasoning process. Hilltop Const., Inc. v. Lou Park Apartments, 1982, 324 N.W.2d 236.

Arbitrator is permitted to interpret rules under which his decision is made. Haekenkamp v. Allstate Ins. Co., 1978, 265 N.W.2d 821.

An arbitrator, in the absence of any agreement limiting his authority, is final judge of both law and fact, including interpretation of terms of any contract. Children's Hospital, Inc. v. Minnesota Nurses Ass'n. 1978, 265 N.W. 2d 649.

Where arbitrators are not restricted by the submission to decide according to principles of law, they may make an award according to their own notion of justice without regard to the law, they may make an award according to their own notion of justice without regard to the law, but where the arbitrators are so restricted, they have no authority to disregard the law. Metropolitan Waste Control Commission v. City of Minnetonka, 1976, 308 Minn. 385, 242 N.W.2d 830.

2. Vacation

Where issue of existence or scope of arbitration agreement is raised in judicial proceedings to vacate arbitration award, trial court is not bound by decision of arbitrator but must independently determine issue by ascertaining intent of parties from language of their written agreement and such other admissible evidence as may be submitted to resolve questions of law or fact. U.S.

Fidelity & Guaranty Co. v. Fruchtman, 1978, 263 N.W. 2d 66.

Where arbitrability of insurance coverage dispute is challenged in judicial proceedings to vacate arbitrator's award, such proceedings are de novo, trial court is not bound by arbitrator's determination, objecting party has burden of proving invalidity of arbitrator's award, and award must be vacated where arbitrator has clearly exceeded his powers. Id.

Award of arbitration would be ordered vacated where the arbitrators, acting under a restricted submission, exceeded their powers by making a compromise award unresponsive to the issue submitted. Metropolitan Waste Control Commission v. City of Minnetonka, 1976, 308 Minn. 385, 242 N.W. 2d 830.

3. Evidence supporting findings

Where transcript of arbitration proceeding showed no evidence to support finding that

there was physical contact between uninsured motor vehicle and vehicle in which claimant under automobile liability policy sought uninsured motorist insurance benefits, and where such physical contact was precondition according to terms of policy, arbitrator exceeded her powers in finding coverage under policy. U.S. Fidelity & Guaranty Co. v Fruchtman, 1978, 263 N.W.2d 66.

4. Review

Arbitrator's award is appropriate so long as interpretation can in some rational manner be derived from agreement, viewed in light of its language, its context, and any other indicia of parties' intention; only when there is manifest disregard of agreement, totally unsupported by principles of contract construction and law of shop, may reviewing court disturb award. AFSCME Dist. Council 96 v. Independent School Dist. No. 381, Two Harbors, App.1984, 351 N.W.2d 33.